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FEDERAL ELECTION COMMISSION  
AUG 23 2007  
SECRETARIAT

BEFORE THE FEDERAL ELECTION COMMISSION

2007 AUG 23 P 4: 19

**SENSITIVE**

In the Matter of )

Jack Orchulli )

Friends of Jack Orchulli and )

Jack Orchulli, in his official capacity )

as treasurer )

MUR 5728

GENERAL COUNSEL'S REPORT #2

**I. ACTIONS RECOMMENDED**

(1) Find probable cause to believe that Friends of Jack Orchulli and Jack Orchulli, in his official capacity as treasurer, violated 2 U.S.C. §§ 434(a)(6)(B)(iii) and (iv) and 11 C.F.R. §§ 400.21(a) and 400.22(a); (2) find probable cause to believe that Jack Orchulli violated 2 U.S.C. §§ 434(a)(6)(B)(iii) and (iv) [REDACTED]

**II. BACKGROUND**

Jack Orchulli was a candidate for United States Senate from Connecticut in 2004. Between May 14, 2004 and October 11, 2004, Orchulli made \$1,040,000 in loans to his authorized campaign committee, Friends of Jack Orchulli (the "Committee"), all of which were designated for the general election, and were reported on the appropriate quarterly disclosure reports. Specifically, Orchulli made loans to the Committee of \$30,000 each on May 14, 2004, June 4, 2004 and June 16, 2004, respectively. On June 23, 2004, he loaned an additional \$450,000 to the Committee, bringing his personal loan total to \$540,000, which, by exceeding the reporting threshold, required the filing of a 24 Hour Notice of Expenditure from Candidate's Personal Funds ("FEC Form 10"). Thereafter, Orchulli loaned the Committee \$250,000 on September 13, 2004, \$100,000 on September 16, and \$150,000 on October 11, 2004. Neither

[REDACTED]

Orchulli nor the Committee ("Respondents") timely filed an initial or additional FEC Form 10's disclosing these expenditures from personal funds.

On October 7, 2004, the Commission sent a Request for Additional Information to the Committee requesting an explanation for the absence of the initial FEC Form 10 in connection with the candidate's expenditure of personal funds in the form of loans totaling \$540,000 as of June 23, 2004. On October 22, 2004, the Committee filed an FEC Form 10 regarding this expenditure, 120 days late. On October 22, 2004, the Committee also filed an FEC Form 10 for each of the two candidate loans made in September 2004 and for the October 11, 2004 candidate loan, 38 days, 35 days and 10 days late, respectively.

The Commission found reason to believe that Friends of Jack Orchulli and Jack Orchulli, in his official capacity as treasurer, violated 2 U.S.C. § 434(a)(6)(B)(iii) and (iv) and 11 C.F.R. §§ 400.21(a) and 400.22(a) by failing to timely file the initial and three subsequent notifications of personal expenditures. The Commission also found that Jack Orchulli violated 2 U.S.C. § 434(a)(6)(ii) and (iv) by failing to timely file the initial and three additional notifications of personal expenditures. The Commission authorized pre-probable cause conciliation with the Respondents and approved a joint conciliation agreement with an opening settlement offer of \$156,000.

After advising the Commission that pre-probable cause negotiations were unsuccessful, see Memorandum to the Commission in MUR 5728 dated February 13, 2007, we sent Respondents a General Counsel's Brief, which is incorporated herein by reference. Representing himself and the Committee, Orchulli responded to our Brief in a letter dated June 5, 2007

1 ("Reply"), in which he also requested a pre-probable cause hearing. See Attachment 1 at 2. The  
2 Commission denied the hearing request, and we have so notified Orchulli.

3 **III. THERE IS PROBABLE CAUSE TO BELIEVE THAT RESPONDENTS**  
4 **VIOLATED THE ACT AND THE COMMISSION'S REGULATIONS BY**  
5 **FAILING TO TIMELY FILE FOUR FEC FORM 10s**  
6

7 A Senate candidate or his principal campaign committee must notify the Secretary of the  
8 Senate, the Commission and each opposing candidate within 24 hours of when the candidate  
9 makes an expenditure from personal funds exceeding two times the threshold amount. 2 U.S.C.  
10 § 434(a)(6)(B)(iii); 11 C.F.R. § 400.21(a). For each additional expenditure of \$10,000 or more,  
11 the Secretary of the Senate, the Commission and each opposing candidate must be notified by  
12 an FEC Form 10 filing within 24 hours of the time such expenditure is made. 2 U.S.C.  
13 §§ 434(a)(6)(B)(iv); 11 C.F.R. § 400.22(a). Although an FEC Form 10 is signed by the  
14 committee treasurer, the candidate is responsible for ensuring that it is filed in a timely manner.  
15 See 11 C.F.R. § 400.25.

16 Mr. Orchulli's \$450,000 loan on June 23, 2004 caused his total personal expenditures for  
17 the general election to exceed the threshold for filing an initial FEC Form 10. By exceeding this  
18 amount, Respondents were required to file an FEC Form 10 with the Commission and send  
19 copies to the Secretary of the Senate and to the candidate's opponents within 24 hours of making  
20 the expenditure, or by June 24, 2004, but they failed to do so. In addition, they failed to timely  
21 file additional FEC Form 10's regarding Orchulli's loans to the Committee on September 13,  
22 2004, September 16, 2004 and October 11, 2004, each of which was in excess of \$10,000. There  
23 is no dispute as to these facts.

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1 In the Reply, Orchulli, on behalf of the Respondents, states that he takes responsibility for  
2 the untimely filings. Attachment 1 at 2. However, Respondents also state that the late filings  
3 were not significant because they had no impact on the outcome of the election or the campaign  
4 needs of Orchulli's opponent, Senator Dodd. *Id.* at 1. According to the Reply, Senator Dodd's  
5 2004 campaign raised \$7,097,118, spent \$5,667,015, and had \$2,342,800 cash on hand as of  
6 December 31, 2004, whereas Orchulli's campaign raised \$1,474,842, spent \$1,460,367, and had  
7 \$14,472 cash on hand as of December 31, 2004—a fundraising ratio of 4.88 to 1 and a spending  
8 ratio of 3.88 to 1. *Id.* From this, Respondents state it is clear that Senator Dodd's campaign did  
9 not need increased contribution limits potentially available to it as a result of Orchulli's large  
10 personal expenditures. *See* 2 U.S.C. § 441a(i)(1)(C); 11 C.F.R. § 400.40. Moreover, they point  
11 out that Senator Dodd won the election with 66.4% of the vote, to Orchulli's 33.1%.<sup>1</sup> Given  
12 these facts, Respondents conclude, it would be “wrong and not justified” to penalize them  
13 financially. Attachment 1 at 2.

14 We interpret the Respondents' arguments as aimed at mitigation of the probable cause  
15 opening settlement offer as there is no dispute that the Act and the Commission's regulations  
16 required them to timely file the four Form 10s in issue, and they admittedly failed to do so.  
17 There is no exception to the filing requirements based on the financial “needs” of opponents,  
18 their eligibility for increased contribution limits, or the outcome of the election. Therefore, we  
19 recommend that the Commission find probable cause to believe that Friends of Jack Orchulli and

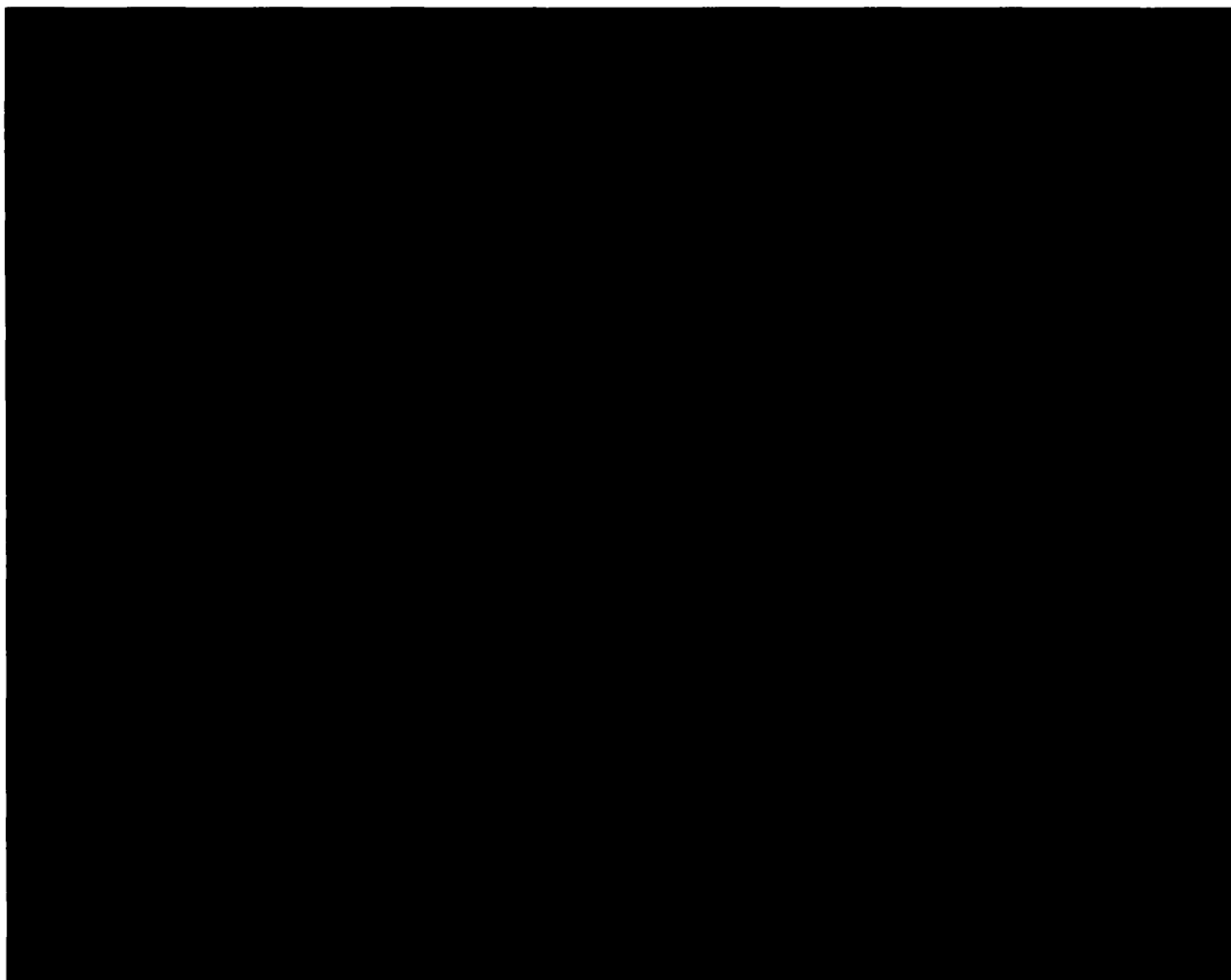
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<sup>1</sup> The Reply states that two minor candidates who received only 1.5% of the vote, and spent no money on their campaigns, were also not affected by the late filings.

1 Jack Orchulli, in his official capacity as treasurer, violated 2 U.S.C. §§ 434(a)(6)(B)(iii) and(iv)  
2 and 11 C.F.R. §§ 400.21(a) and 400.22(a). We also recommend that the Commission find  
3 probable cause to believe that Jack Orchulli violated 2 U.S.C. § 434(a)(6)(B)(iii) and (iv).

4 **IV. DISCUSSION OF CONCILIATION AND CIVIL PENALTY**

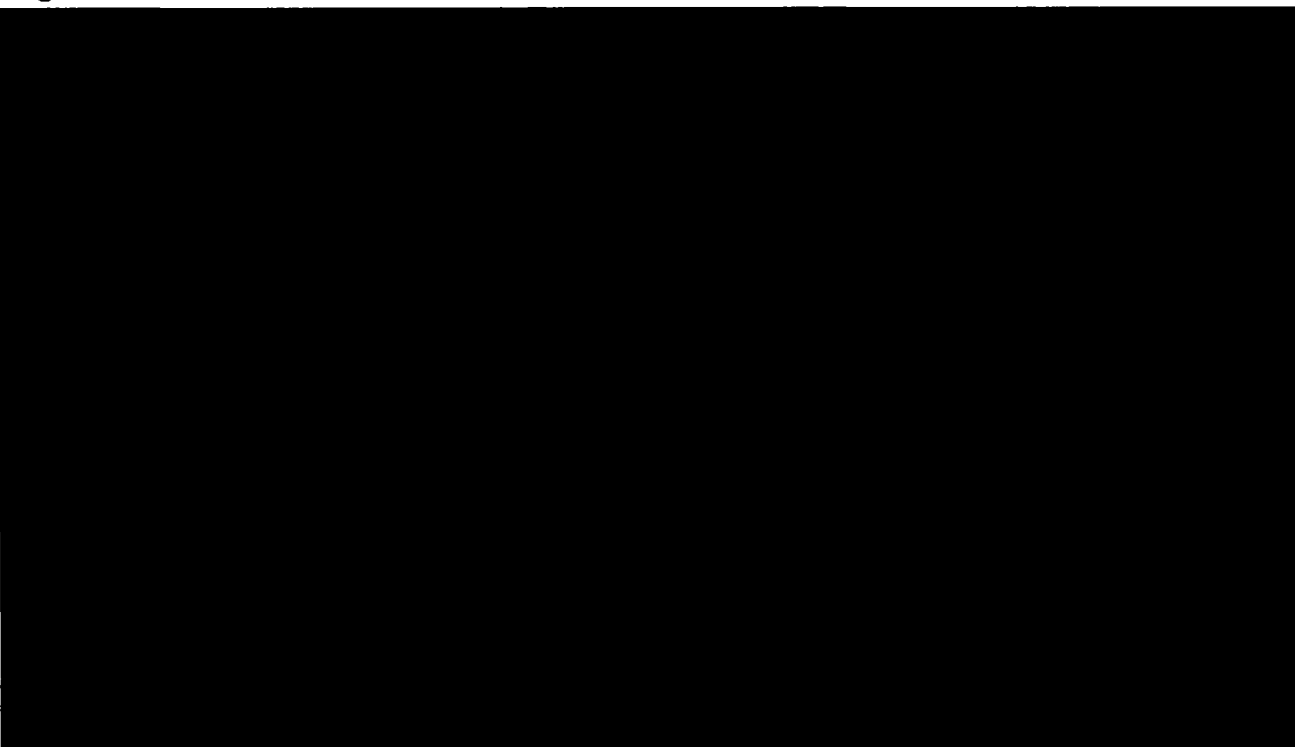


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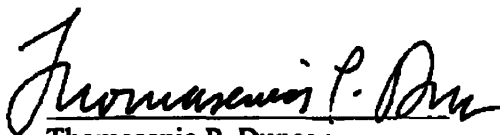



**VI. RECOMMENDATIONS**

1. Find probable cause to believe that Friends of Jack Orchulli and Jack Orchulli, in his official capacity as treasurer, violated 2 U.S.C. §§ 434(a)(6)(B)(iii) and (iv) and 11 C.F.R. §§ 400.21(a) and 400.22(a).
2. Find probable cause to believe that Jack Orchulli violated 2 U.S.C. § 434(a)(6)(B)(iii) and (iv).
3. [REDACTED]

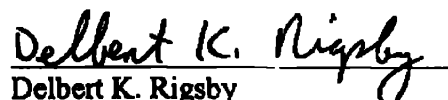
4. Approve the appropriate letter.

August 20, 2007  
Date

  
Thomasenia P. Duncan  
General Counsel

  
Ann Marie Terzaken  
Acting Associate General Counsel  
for Enforcement

  
Susan L. Lebeaux  
Assistant General Counsel

  
Delbert K. Rigsby  
Attorney

Attachments

1. Reply (without attachments) to the General Counsel's Brief
2. [REDACTED]

# COPY

JACK C. ORCHULLI

DARIEN, CONNECTICUT 06820

Secretary of the Commission  
Federal Election Commission  
999 E Street, N. W.  
Washington, D. C. 20463

5 June 07

MUR 5728

Dear Commissioners:

Your Office of General Counsel is recommending to you that there is probably cause that I violated 2 U.S.C 434 (a)(6)(iii) and 11 C.F.R. 400.21(a) and 400.22(a) requirements (see attachments 11-12). Effectively, we filed certain financial reports late (mostly, the millionaire's 24 hour filing requirement) during my campaign for the United States Senate in Connecticut against Senator Chris Dodd in 2004. While our campaign used electronic filing reports (with Aristotle software), the millionaire's reports were not on that electronic system and were, unfortunately, overlooked by my staff for timely paper filing. All filings were overseen by my campaign manager, our accountant, and our administrative person to avoid mistakes but we all missed this millionaire's filing report.

For the General Counsel to isolate just my campaign's contributions/expenses and ignore all other factors in this campaign does not allow for a reasoned judgment. The facts will readily show that, in the context of the overall campaign, these late filings were not significant and had no impact whatsoever on the outcome of that election and the campaign financial needs of Senator Dodd or anyone else.

Page 3 and attachment 1 show that Senator Dodd raised \$7,097,118, spent \$5,667,015 and had \$2,342,800 on hand as of 31 December 04 with no debt. I raised \$1,474,842, spent \$1,460,367 and had \$14,472 as of 31 December 04. Senator Dodd raised 4.88 times more than me and spent 3.88 times more than me on this campaign. The purpose of the millionaire's amendment is to allow the opposition candidate/s (here, Senator Dodd) the opportunity to raise more funds per contributor once a 'trigger Samount' is spend. Clearly, Senator Dodd did not need such financial help during this campaign and my late filings were, thus, insignificant in its effect. The other two minor candidates received a total of 1.5% of the vote, spent no money on their campaigns and were also not affected by my late filings.

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COUNSEL

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ATTACHMENT 1

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Page 3 and attachments 2 show that Senator Dodd has been in Federal office since 1975 and before that, his father, Thomas Dodd was a United States Congressman and then Senator. The Dodd name has been in Connecticut politics for over 50 years. I, on the other hand, was a political unknown to both the political party and to the citizens/voters, was a newer resident to Connecticut and had no name recognition. This reality further supports the conclusion that my filing late had no impact on Senator Dodd getting his message out to the public. He was/is a well known entity in the State and people know the Dodd name.

Page 4 and attachment 3 show that the outcome of the election had Senator Dodd with 66.4% of the vote and 33.1% for me (1.5% for others). The significance in this vote is with the Quinnipiac University polls taken during 2004 (Attachments 4-8) which clearly show that Senator Dodd's 'numbers' only improved as the campaign progresses (i.e., his approval rating went from 60 on 20 November 03 to 64% on 20 September 04). The other poll numbers further reinforce this increased approval of Senator Dodd and were borne out by the actual results as stated above. The importance is that almost all of my late filings and personal contributions and expenditures were within this time frame and clearly had no impact on voters.

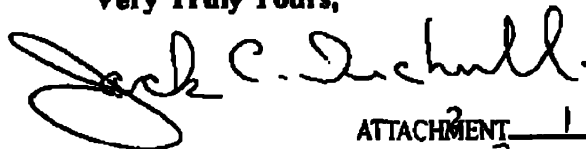
Page 5 and attachments 9-10 present the relative campaign financings which occurred in Connecticut's Federal elections in 2004 and in 2006. In 2004, there were 2 really contested Congressional races and 3 of the 4 candidates outspent me for their regional race. In 2006, the then unknown U. S. Senate candidate, Ned Lamont, spent over \$20 million (as did Senator Lieberman) and in the 3 contested Congressional races, all 6 regional candidates far out spent what I had spent for a state wide race. If you isolate my \$1.4 million expenditure, it is a lot of money. However, in the context of what is needed for a State wide race and what has been spent by others in Connecticut in recent years, it is not a lot of money.

There was no intent on my part to file late but it was a mistake for which I take responsibility. If the mistake had any repercussions or impact on that Senate race, it is one thing. However, there was no significance or effect caused by the late filings and to penalize me financially would be, in my simple mind, wrong and not justified since the purpose/intent of the filing laws were not impaired by the late filings.

If necessary and for further clarification, I am requesting an opportunity to appear before you (via the Pilot Program for Probable Cause Hearings).

While I am not a lawyer, the facts of this situation are simple and straight forward enough to avoid the high costs and complications of engaging a lawyer. I spend a substantial amount of my savings and almost 2 years of my life in that quest to be a United States Senator, well knowing my odds. Now retired, I don't need to spend more time or money on that history. Therefore, I respectfully make this submission of my case directly to the Federal Election Commissioners.

Very Truly Yours,



ATTACHMENT 1  
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